



To: Senate Criminal Justice Subcommittee
From: Michelle Richardson, Director of Public Policy & Advocacy
Date: January 25, 2016
Re: **Vote YES on SB 1044 / HB 883**

We urge you to vote YES on SB 1044 / HB 883 which will reform the practice of civil asset forfeiture in Florida. It is currently lawful for a law enforcement agency to seize the belongings of someone who has not been convicted of a crime and according to a recent Senate study (OPPAGA report), this happens thousands of times a year.

Currently the Florida Contraband Forfeiture Act allows law enforcement to seize a person's belongings when they have probable cause to believe the property was, is or will be used in the commission of a felony or any drug crime¹. According to a November 2015 OPPAGA survey of approximately half of Florida's law enforcement, the authority had been used to conduct 19,000 seizures over five years,² which resulted in approximately \$68 million in deposits to forfeiture accounts.³ A full 86 percent of the agencies that responded to OPPAGA's inquiry said that most or all of their seizures were drug related,⁴ and the seizures were mostly of cash and cars.⁵ Of course these numbers are incomplete; there are no mandatory reporting requirements in Florida and OPPAGA received answers from about half of existing law enforcement agencies. It's likely the number of seizures is much higher.

Civil asset forfeiture proponents claim that it funds law enforcement activities with criminals' money instead of the tax payers'. But by definition, these property owners have never been found guilty beyond a reasonable doubt nor have they been provided with the protections that come with a prosecution such as state-provided counsel if they are low income. Instead, they are entitled to a preliminary and adversarial probable cause hearing before a judge, and if they request, a full jury trial where the burden is on law enforcement to demonstrate the goods are contraband by a preponderance of the evidence. According to OPPAGA, however, only 16 percent of property owners requested an adversarial hearing and 1 percent requested a trial.⁶ This ultimately results in property owners

¹ Florida Contraband Forfeiture Act, § 931.701-706. There are other state-regulated goods that are specifically eligible for seizure if used or sold in violation of statute, such as alcohol, tobacco or gambling paraphernalia.

² Civil Asset Forfeiture in Florida: Policies and Practices, Office of Program Policy Analysis and Government Accountability, November 2015, at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1510rpt.pdf>. OPPAGA's report is based on a voluntary survey conducted over the summer of 2015. Approximately half of Florida law enforcement agencies responded.

³ Id. at 9.

⁴ Id. at 5.

⁵ Id.

⁶ Id. at 7.

recovering their property 25 percent of the time, splitting it with law enforcement 34 percent of the time, and losing it completely in 36 percent of cases.⁷

SB 1044 / HB 883 will fundamentally reform forfeitures in Florida by ensuring that an initial seizure must be incident to an arrest, and that ownership will only transfer to law enforcement upon a conviction, a guilty plea, or a nolo contendere plea. We urge you to vote YES.

⁷ Id. at 8. These numbers reflect fiscal year 2013-2014 and do not account for the 5 percent of cases that were still pending.